



W.P(MD)No.4347 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4347 of 2020

and

W.M.P.(MD)No.3654 of 2020

K.Thandeeswaran

... Petitioner

Vs.

1.The Secretary to Government of Tamil Nadu,
Labour and Employment (N1) Department,
Fort St.George, Chennai-600 009.

2.The Director of Employment and Training,
SIDCO Industrial Estate,
Guindy, Chennai-32.

3.The Secretary,
Tamil Nadu Public Service Commission,
Prasar Bala Salai,
Chennai-3.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Government order passed by the 1st Respondent in G.O.(D).No.610 (Labour and Employment (N1) Depart) dated 31-10-2019 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently, directing the 1st respondent to reinstate the petitioner for the post of District Employment Officer.



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For Petitioner : Mr.K.Govindarajan
for Mr.G.Thiruvavutselvam
For R1 & R2 : Mr.R.Suresh Kumar
Additional Government Pleader
For R3 : Mr.J.Anand Kumar

ORDER

Heard the learned counsel on either side.

2. The writ petitioner joined the Department of Labour and Employment in 1998. He was promoted as District Employment Officer in the year 2010. He was transferred to Sivagangai in the year 2012. The petitioner was issued with charge memo dated 16.07.2014. It contained as many as 8 articles of charge. The broad thrust of the charge memo is that while sponsoring candidates, some names were left out. Enquiry was conducted and the enquiry officer found the charges to be proved. After getting the petitioner's representation and also the concurrence of TNPSC, the Department dated 28.12.2018 imposed the punishment of compulsory retirement. The petitioner applied for review. However, the review petition was rejected vide G.O.(D)No. 610 (Labour and Employment (N1) Department), dated 31.10.2019. Questioning the same, the writ petition has been filed.



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3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit and called upon this Court to grant relief as sought for.

4. The respondents have filed a detailed counter affidavit and the learned Additional Government Pleader appearing for the respondents took me through its contents. He submitted that the impugned order do not call for any interference.

5. I carefully considered the rival contentions and went through the materials on record.

6. The primary contention of the writ petitioner is that during the relevant time, the records had been digitized. The data which was maintained in manual registers had been entered in the system. The petitioner sponsored the candidates based on the download from the system. The petitioner fairly concedes that it is possible that while entering data into the system, the subordinate staff could have committed inadvertent error. His contention is that the process of digitization had taken place by the time the petitioner assumed charge as the District Employment Officer in Sivagangai. According



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to him, the petitioner should not be faulted for any discrepancy or omission that had taken place in the digitization process earlier. The other contentions raised by the learned counsel for the petitioner is that a similar charge was framed against the petitioner's successor by name Periyasamy.

7. I went through the response of the said Periyasamy to the charges. The said Periyasamy also had pleaded on the very same lines. Interestingly, the charges were found to be not established as far as Periyasamy was concerned. I prima facie find that a different yardstick was adopted in the case of the petitioner.

8. That apart, following the decision of the Hon'ble Apex Court in ***State of Orissa Vs. Mamata Mohanty (2011) 3 SCC 436***, the list of candidates by the employment exchange had lost its sanctity. Applying the equality mandate set out in Article 14 of the Constitution of India, it has been declared that public employment must be filled up based on open market recruitment. Even if there were omissions in the list sponsored by the petitioner, it could not have infringed the rights of any party. The omitted candidate was at liberty to apply for the job in question. Merely because a candidate had been sponsored by the employment exchange, he will not get any priority treatment. The learned



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counsel appearing for the petitioner would point out that no complaint was received from any aggrieved registrant. It is not the case of the disciplinary authority that the petitioner had taken illegal gratification and favoured any particular candidate or discriminated against any registrant. When no dishonest motive is attributed, imposing punishment of compulsory retirement is grossly disproportionate and shocks to my judicial conscience. The Hon'ble Apex Court had held in the decision reported in **(1979) 2 SCC 280 (Union of India Vs. J.Ahmed)** that for an act to amount to misconduct, dishonest motive must be present. Since such dishonest is absent in this case, the petitioner's omission does not warrant punishment that was imposed by the Government. I also bear in mind that the petitioner belongs to SC community. He is having a child who is mentally retarded.

9. In this view of the matter, the order impugned in the writ petition is set aside. The petitioner's counsel, on instructions, states that he would be satisfied, if what is eligible to him even in the impugned order is paid to him. In other words, he will not make any claim for extra payment with effect from 28.12.2018 till the date of reinstatement. The first respondent is directed to issue order of reinstatement within a period of six weeks from the date of receipt of a copy of this order. The aforesaid period will be treated as duty for all other purposes.



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10. The Writ Petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes/ No

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To

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G.R.SWAMINATHAN, J.

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